

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20580

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	CC Docket No. 92-90
	)	
	)	

To the Commission:

**Comments of the Yellow Pages Integrated Media Association**

The Yellow Pages Integrated Media Association (“Yellow Pages I.M.A.”), formerly the Yellow Pages Publishers Association, is a global trade association based in Berkeley Heights, New Jersey, representing the Yellow Pages industry, both print and electronic. Yellow Pages I.M.A. members include publishers (of both Yellow and White Pages) and other businesses associated with the Yellow Pages industry. Many Yellow Pages I.M.A. members operate on-line directory services, such as Superpages.com and Switchboard.com.

I. FTC PROPOSED RULES AND BUSINESS-TO-BUSINESS EXEMPTION

Yellow Pages I.M.A. has been active in the Federal Trade Commission’s (the “FTC’s”) telemarketing sales rules proceeding (FTC File No. R411011). The association filed comments and participated in the FTC’s public forum.

The Federal Communications Commission ( “the FCC” or “the Commission”) is now considering adopting some or all of the FTC’s proposed rules on a national do-not-call list, and

seeks comment on such a proposal.<sup>1</sup> Yellow Pages I.M.A. is particularly concerned about the FTC's proposed changes to the business-to-business telemarketing exemption in 16 CFR Section 310.6(g). The proposed rule would eliminate the business-to-business exemption of the marketing of Internet services and Web services. Yellow Pages I.M.A. member companies currently offer these services to other businesses — particularly small businesses — within the context of their on-line directory offerings. Members must use telemarketing methodologies to sell these services to small businesses because the high cost of on-premise visits makes face-to-face sales calls impractical.

The elimination of the business-to-business exemption for telemarketers of Internet services or Web services is unsound public policy and will impede small businesses' access to these emerging technologies, thereby hindering their ability to expand their product and service offerings and attract new customers. Certainly, more choices that allow small businesses access to profit-generating services, not less, are better for the small business community.

Acknowledging that other sales rules may apply, the elimination of the exemption will affect the cost structure of these services by resulting in increased administrative overhead that will prove costly, burdensome and disruptive both to the small business and to the suppliers of these services.

For many small businesses, their current use of print Yellow Pages advertising represents the most significant marketing tool they utilize. Admittedly, disreputable organizations may use telemarketing techniques to deliver fraudulent offers to small businesses. However, it is all the more important to allow reputable companies to offer expanded services such as Web and

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<sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Notice of Proposed Rulemaking released September 18, 2002, at paragraph 58 (“*the NPRM*”).

Internet services to small businesses. The majority of Yellow Pages advertisers are small businesses that have successfully used the product's unique features to grow their business. Today, these small businesses spend more than \$13.5 billion annually on Yellow Pages advertising. As stated, Yellow Pages publishers are beginning to offer on-line products to complement and enhance their printed advertising services.

While small business represents a critical component of the economy, it is a sector that is often ignored by advertising agencies, marketing consultants and media outlets that cannot (or choose not to) address the small business market. Many times, the cost of sales is the determining factor. If sales costs increase due to additional administrative mandates, then small businesses will not be able to avail themselves readily of new ways to grow their business. The gap between the large businesses' and small businesses' ability to adopt new technologies will widen if small businesses are not permitted to utilize the services of targeted and efficient providers of these technologies.

Removing the exemption for business-to-business telemarketing of Internet services and Web services will impede those businesses that have the most to gain from these technological advances. Many small businesses suffer because of their relative distance from major commercial centers and the prohibitive costs of traditional marketing programs. Internet services and Web services offer these small businesses the opportunity to establish a presence with potential customers in a financially viable manner. And, just as Yellow Pages publishers have used telemarketing to successfully provide the appropriate print products for small, remote businesses, telemarketing is also necessary to furnish customized Internet services and Web services for these same businesses.

Most Yellow Page advertisers are small businesses, and there is significant opportunity for growth in this segment of the market. The non-advertisers represent millions of small businesses nationwide. A considerable number of these businesses would benefit from exploring Internet and Web-based services, and thus need ready access to reputable providers to enhance their awareness and assist them in developing suitable marketing programs.

The Commission adopted rules in its proceedings implementing the Telecommunications Act of 1996 (the “Telecom Act”) that recognize the expansion of print products into Internet and Web-based products, with the goal of enhancing competition in the directory publishing industry:

*“...Interpreting section 222(e) as entitling directory publishers to obtain subscriber list information for use in Internet directories will further Congress’s goal of promoting competition in directory publishings. ... We find that extending the guarantees of section 222(e) to publishers of telephone directories on the Internet will further enhance competition in the market for directory publishing”<sup>2</sup>*

The Commission recognized that the information provided to publishers was meant to be used for marketing and sales purposes:

*“Directory publishers, however, engage in additional activities ‘for the purpose of publishing directories.’ We conclude that these activities include the marketing of directory advertising to businesses. ...The marketing of directory advertising is essential to the process of publishing directories. ... We therefore conclude that the statutory phrase ‘for the purpose of publishing directories’ encompasses the use of subscriber list information to solicit yellow pages advertising.”<sup>3</sup>*

The Telecom Act and the Commission’s existing rules encourage development of Yellow Page directories on the Internet, and have created rules that facilitate this evolution. The FTC's

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<sup>2</sup> FCC 01-27, Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC-Docket No. 99-273, First Report And Order at paragraph 42.

proposed rule change, if adopted by the Commission or the FTC, would artificially hinder that evolution.

This issue of limiting the business-to-business exemption was discussed at the FTC's open forum on June 7, 2002. Several participants spoke out against the proposal, while none spoke in favor of it. It is hoped that the FTC would not adopt the Internet and Web services language. Yellow Pages I.M.A. urges the Commission to not limit any business-to-business exemption.

## II. NOTIFICATION

Should the Commission adopt a national do-not-call list, the Telephone Consumer Protection Act of 1991 (TCPA) requires that each common carrier inform its subscribers of the opportunity to object to receiving telephone solicitations.<sup>4</sup> The Commission asks for comments on this and other requirements contained in Section 227(c)(3).<sup>5</sup>

The statute is clear that some form of notification must be given to subscribers. The Commission has jurisdiction over common carriers and has directed the carriers to use various ways to notify telephone subscribers in the past. The Commission should only enlist notification methods that come under the Commission's jurisdiction over common carriers such as their bill statements, Websites, or other carrier-based methods. Yellow Pages I.M.A. is

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<sup>3</sup> Third Report And Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273 at paragraph 118.

<sup>4</sup> 47 U.S.C. § 227(c)(3)(B).

<sup>5</sup> *NPRM* at paragraph 31.

concerned about Commission mandates requiring directory publishers to include information in a telephone directory.

Directory publishing is a competitive business, and many directories are published by directory publishers who are not affiliated with a common carrier. There are many instances where these unaffiliated directories compete head-to-head with common carrier-affiliated directories. If the Commission ordered notification to be contained in common carrier-affiliated telephone directories, some directories would contain the required notice, while others would not, creating confusion among consumers.<sup>6</sup> Yellow Pages I.M.A. strongly urges the Commission to utilize other forms of subscriber notification.

### III. RELATIONSHIP BETWEEN SECTION 222 AND SECTION 227

Yellow Pages I.M.A. agrees with the Commission's tentative conclusion that honoring a do-not-call request under section 227 does not nullify CPNI use consent under section 222. We also agree with the Commission's tentative conclusion that CPNI opt-out consent under Section 222 does not trump a section 227 do-not-call request. These two items are different, and linking them together will simply cause consumer confusion.<sup>7</sup>

When Congress adopted Section 222 as part of the Telecommunications Act of 1996,<sup>8</sup> Congress was not concerned about limiting telephone solicitations. Congress was, however,

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<sup>6</sup> Should the Commission unilaterally impose a directory-based notification mandate, we urge the Commission to be very careful to not increase the cost of publishing and delivering directories. It would be unfair to the directory publishers to put this burden entirely on the directory publishing industry.

<sup>7</sup> *NPRM* at paragraph 19.

<sup>8</sup> Public Law 104-104.

interested in protecting customer confidentiality.<sup>9</sup> Section 222 is titled “Privacy of Customer Information” and subsection (a) states that “Every common carrier has a duty to protect the *confidentiality* of proprietary information of... customers.”<sup>10</sup> (Emphasis added). Congress has moved to protect the privacy of other customer information, including medical and financial information. The fact that this customer information is protected does not, in any way, imply that the customer wishes to be placed on a do-not-call list. A customer placing their name on a do-not-call list does not necessarily mean that the customer would be averse to a carrier using the customer’s CPNI to market new products and services to the customer.

Yellow Pages I.M.A. believes that the two concepts are fundamentally separate. Consumers who do not want to receive solicitations via telephone are going to request to be placed on the do-not-call list, regardless of whether the consumer has consented to the use of their CPNI. By linking the two, the Commission will create confusion for the consumers, as well as the carriers.

#### IV. THE EXISTING BUSINESS RELATIONSHIP EXEMPTION

The Commission asks for comments on the existing “established business relationship” exemption contained in the Commission’s rules.<sup>11</sup> Currently, the established business relationship rule only deals with an exemption for artificial or prerecorded voice messages.

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<sup>9</sup> See generally, *Conference Report to S. 652, Report No. 104-458*, 104<sup>th</sup> Congress, Second Session (1996) at page 205.

<sup>10</sup> 47 U.S.C. Sec. 222(a).

<sup>11</sup> *NPRM* at paragraphs 34 and 35.

Yellow Pages I.M.A. interprets the rules to deal with an established business relationship with an individual, and not with another business.

Should the Commission adopt a national do-not-call list,<sup>12</sup> we believe it would be wise to also extend the existing business relationship exemption to any telemarketing restriction. We also urge the Commission not to interpret established business relationships too narrowly.

Yellow Pages I.M.A. members sell directory advertising in physical telephone books, as well as on-line directories. We believe that an established business relationship for on-line directory advertising should also establish a business relationship for the sale of published directory advertising and *vice versa*.

On-line and physical directory advertising are integrally related. In order for a small business to establish a presence both locally and globally, the small business needs to combine its local advertising in the Yellow Pages or other directory, with advertising in an on-line directory. To limit the ability of a salesperson to call the small business owner to alert them to the potential to leverage their Yellow Pages ad into an on-line advertising opportunity makes little sense for the small business owner or the directory publisher. As noted above, both on-line and physical directory advertising are critical to small business owners.

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<sup>12</sup> It is Yellow Pages I.M.A.'s understanding that the FTC may attempt to include business telephone numbers in its do-not-call list. While the FTC's attempt to include businesses in the do-not-call is bad public policy and has its own legal inherent problems, we understand that the Commission may, for simplicity's sake, simply adopt some or all of the FTC's rules. We urge the Commission to resist this effort. If, however, business telephone numbers appear on the do-not-call list, the existing business relationship exemption becomes that much more important.



V. CONCLUSION

Yellow Pages I.M.A. applauds the Commission's effort to update its telemarketing rules. Consumer privacy is an important public interest goal. Privacy rules, however, should not be so broad as to harm the free flow of commerce, especially in the business-to-business context. However the Commission determines what is the appropriate way to update its telemarketing rules, we urge the Commission not to limit business-to-business communications in any way. Such restrictions would have unintended consequences, harming small businesses and directory publishers alike.

Respectfully submitted,

**Yellow Pages Integrated Media Association**

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